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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 120409402-2402-01]

RIN 0648-BB06

Second Fishing Capacity Reduction Program for the Longline
Catcher Processor Subsector of the Bering Sea and Aleutian
Islands Non-pollock Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement a second fishing capacity reduction program (also commonly known as "buyback") and an industry fee system to repay a \$2.7 million loan for a single latent permit within the Longline Catcher Processor Subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery (Reduction Fishery). The purpose of this action is to permanently reduce the greatest amount of fishing capacity at the least cost. This should result in increased harvesting productivity for the permit holders remaining in the fishery. The loan for this program will be added to the previous program loan of \$35,700,000 authorized by the FY 2005

Appropriations Act (the Appropriations Act). For purposes of this regulation, the terms license and permit are used interchangeably.

DATES: Comments must be submitted in writing on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by [NOAA-NMFS-2012-0050] by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>; to submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter [NOAA-NMFS-2012-0050] in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "submit a comment" icon on the right of that line.
- Mail: Submit written comments to Paul Marx, Chief, Financial Services Division, NMFS, Attn: BSAI Non-Pollock Groundfish Buyback Rulemaking, 1315 East-West Highway, Silver Spring, MD 20910.

- Fax 301-713-1306; Submit comment Attn: Paul Marx

Instructions: Comments must be submitted by one of the above methods to ensure that they are duly received and considered by NMFS. Comments sent by any other method, to any

other address or individual, or received after the end of the comment period, will not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel; WordPerfect, or Adobe PDF file formats only.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the mailing address above or by calling Michael A. Sturtevant (see FOR FURTHER INFORMATION CONTACT).

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Michael A. Sturtevant at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or e-mail to

OIRA_Submission@omb.eop.gov, or fax to (202) 395-7825.

FOR FURTHER INFORMATION CONTACT: Michael A. Sturtevant at
(301)427-8799, fax (301) 713-1306, or
michael.a.sturtevant@noaa.gov.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

In 1996, in response to the finding that many U.S. fisheries have excess fishing capacity, Congress provided for fishing capacity reduction programs. The intent of a program is to decrease the number of harvesters in the fishery, increase the economic efficiency of harvesting, and facilitate the conservation and management of fishery resources in each fishery in which NMFS conducts a reduction program. Typically, permit holders are paid to voluntarily surrender their fishing permits including relevant fishing histories for that fishery, or surrender all their fishing permits and cancel their fishing vessels' fishing endorsements by permanently withdrawing the vessels from all fisheries. The cost of the program is paid either by the remaining harvesters through a loan or taxpayers through a direct appropriation from Congress. Section 312(b)-(e) (16 U.S.C. 1861a(b)-(e)) was added to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to authorize such programs. Congress also amended Title XI of

the Merchant Marine Act, 1936 (Title XI), adding new sections 1111 and 1112 to finance capacity reduction costs. The Title XI provisions involving fishing capacity reduction loans have been codified at 46 U.S.C. 53735.

To implement capacity reduction programs, NMFS promulgated regulations published as subpart L to 50 CFR part 600 (50 CFR 600.1000 et seq.), which contain a framework rule for buyback programs generally. For each individual program, NMFS promulgates regulations at subpart M to 50 CFR part 600 to implement the specific terms of that particular buyback. To undertake this second round of capacity reduction for the BSAI Longline Catcher Processor Subsector, NMFS must publish these regulations.

Initial Reduction Program

The measures contained in this proposed rule to establish the capacity reduction program are authorized the by Appropriations Act. The Appropriations Act authorizes the establishment of fishing capacity reduction programs for catcher processor subsectors within the Alaska groundfish fisheries (i.e., the longline catcher processor subsector, the American Fisheries Act (AFA) trawl catcher processor subsector, the non-AFA trawl catcher processor subsector, and the pot catcher processor subsector) based on capacity reduction plans and

contracts developed by industry and approved by NMFS.

Additionally, Public Law 108-199 provided the initial \$500,000 subsidy cost to fund a \$50 million loan, and Public Law 108-447 provided an additional \$250,000 subsidy cost to fund \$25 million more (in addition to providing for the buyback program itself). Under the Authorization Act, each subsector was allocated a specific amount of the total loan authority.

In 2007, NMFS approved and implemented a \$35.7 million fishing capacity reduction loan program for the Longline Catcher Processor Subsector, which represented the full amount authorized for that subsector. The initial program removed three fishing vessels and 12 fishing licenses and permits for a loan amount of \$35 million. All long-line catcher processors harvesting non-pollock groundfish were required to pay and forward a fee to NMFS to repay the loan. The original fee assessment was \$0.02 per pound caught with payment and collection beginning on October 24, 2007, which has since been reduced to \$0.015.

None of the other subsectors have expressed an interest in implementing a capacity reduction program for their subsector. A provision in the Appropriations Act permits the Secretary of Commerce to make available any of the unused loan amounts, originally allocated for each subsector, for capacity reduction

programs in any of the subsectors after January 1, 2009.

Program Summary

Members of the BSAI Longline Catcher Processor Subsector informed NMFS that they wished to access the remaining loan amounts to undertake a second buyback. To implement this next buyback, the Freezer Longline Conservation Cooperative (FLCC) on behalf of the Reduction Fishery was required by the Appropriations Act to draft and submit to NMFS a Reduction Plan. On August 27, 2010, the FLCC submitted a Reduction Plan to access \$2.7 million of the remaining funds. A Reduction Agreement, Reduction Contract, and application of the statutes and regulations referred to above are the basis for the Reduction Plan. The FLCC's Reduction Plan involves just one permit.

The Reduction Agreement and the Reduction Contract are the two key components of the Reduction Plan and this proposed rule. Substantive provisions of the Reduction Agreement and the Reduction Contract would be codified at 50 CFR 600.1108.

Reduction Program - Overview

All permit holders in the Longline Subsector who wished to relinquish their fishing permits were welcome to participate in the Reduction Program. The Program was divided into four phases: (1) enrollment; (2) offer selection; (3) plan submission; and

(4) implementation, after approval by referendum. The first three phases have been completed. Thus, this rule concerns itself only with the implementation phase of the program.

Reduction Program: The Capacity Reduction Agreement

Reduction Agreement Terms and Definitions

Capitalized terms used in the Reduction Agreement are defined in Schedule A to the Reduction Agreement; other terms are defined within the text of the Reduction Agreement.

Reduction Agreement terms that are essential to understanding the regulatory provisions are set forth in the proposed

§ 600.1108(b).

Reduction Agreement: Major Sections

There are three major sections of the Reduction Agreement: Qualification and Enrollment of Subsector Members; Selection of Offers to Remove Fishing Capacity by the Reduction Plan; and Submission of the Reduction Plan, including the repayment requirements. Identical provisions previously codified in 50 CFR 600.1105 will be incorporated into this section by reference. The proposed rule will also include a fee collection system similar to the one codified at § 600.1106.

Qualification and Enrollment

The FLCC received four offers from the Subsector Members. Each of the four offerors executed a Reduction Agreement and

submitted specified supporting documents evidencing an applicant's status as a Subsector Member. The FLCC Auditor reviewed all documents for strict compliance with the regulatory provisions in § 600.1105.

Selection of Offers to Remove Fishing Capacity by the Reduction Plan

The selection process was consistent with the buyback previously codified at § 600.1105(d) except that the funding source for the loan comes from the residual funds outlined above. In accordance with the previously developed procedures, the FLCC completed the selection process to rank the offers. Following completion of the selection process, the FLCC accepted only one latent permit to be bought out for \$2,700,000.

Plan Submission

After the Selection Process was completed, the FLCC developed the Reduction Plan. The Reduction Plan was submitted to NMFS for its approval on behalf of the Secretary of Commerce. As required by the Appropriations Act, the FLCC has notified the North Pacific Fishery Management Council. Only one License Limitation Program (LLP) license and its fishing history are being submitted for removal from the Reduction Fishery. This latent LLP license is not associated with a vessel. Therefore, no vessel is being removed from the fishery under this Reduction

Program. Fees to repay the loan will be collected as set forth in the proposed § 600.1108.

Approval of the Reduction Plan

The criteria for NMFS, on behalf of the Secretary, to approve any Reduction Plan are specified in § 600.1108(k). Among other things, the Assistant Administrator of NMFS must find that the Reduction Plan is consistent with the Appropriations and the Magnuson-Stevens Acts, and that it will result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time.

The Reduction Plan includes the LLP license selected through the offer process as the asset to be purchased in the Reduction Program. The Reduction Plan also includes the FLCC's supporting documents and rationale for establishing that the current offer represents the expenditure of the least money for the greatest capacity reduction. Acceptance of the offer is at the sole discretion of NMFS.

The FLCC may be required to revise and resubmit the Reduction Plan to conform to the provisions of the final rule after the final rule (resulting from this proposed rule) is published.

The Referendum

NMFS will conduct a referendum to determine the industry's

willingness to repay a fishing capacity reduction loan to purchase the license and fishing rights identified in the Reduction Plan. A successful referendum by a majority of all members of the Reduction Fishery would bind all parties and complete the reduction process.

The current Fishing Capacity Reduction Framework regulatory provisions at § 600.1010 stipulate the procedural and other requirements by which NMFS shall conduct referenda on fishing capacity reduction programs. The proposed § 600.1108(1) makes those framework referendum requirements applicable to this Reduction Program. Only after approval of the Reduction Program via a referendum will the Reduction Program be implemented.

Loan Repayment

Upon completion of a successful referendum to approve a fishing capacity reduction loan, the repayment plan, amortized over a 30-year term, will be implemented. Once the Reduction Program is implemented, repayment of the loan by monthly collection of fees from the remaining Subsector Members operating in the Reduction Fishery will be initiated.

In accordance with § 600.1013, the fees for each individual program should not exceed 5 percent of the average ex-vessel production value of the Reduction Fishery. Thus, the total possible fee from two programs (this proposed rule and the rule

codified under § 600.1105) will not exceed 10 percent of the average ex-vessel pacific cod revenues for one year. In the event that the total principal and interest due for this program exceeds this level, an additional fee for the season will be assessed. This temporary fee assessment will be \$0.01 per pound round weight for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.

The fee will be calculated on an annual basis as: the principal and interest payment amount necessary to amortize the loan over a 30-year term, divided by the Reduction Fishery portion of the BSAI Pacific cod initial total allowable catch (ITAC) allocation in metric tons (converted to pounds). NMFS estimates that the actual fees for this program will be \$0.001 per pound, based upon the estimated fishery revenue from 2010 amortized over a 30-year loan. This program, coupled with the previously codified program in § 600.1105, will bring total fish catch fees to approximately \$0.016 per pound.

For more specific information on submission of the Reduction Plan, including fees to repay the Reduction Loan, see § 600.1108(e) of this proposed rule. For specific information on the fee payment and collection system, see provision (m) of this proposed rule.

The Reduction Program: Other Matters Relating to the Reduction

Agreement and Reduction Plan Review/Disputes

The Reduction Agreement provided for an expedited process to review any decision by the Auditor and for settlement of disputes utilizing an expedited review process by pre-selected legal counsel and, if necessary, binding arbitration. However, this provision was not activated as no disputes occurred during the selection process of this proposed buyback.

Other Provisions of the Reduction Agreement

Proposed regulatory provisions mirroring the Reduction Agreement's provisions for Specific Performance, Miscellaneous, Amendment, and Warranties are specified at § 600.1108(g), (h), (i), and (j), respectively.

The Fee Payment and Collection System

The payment and collection system will remain the same for the loan the subsector previously approved in 2007. Under this proposed rule, provision § 600.1108(m) outlines the requirements for repayment of this loan. This provision mirrors the fee system codified in § 600.1106 for the 2007 loan, except in total amount. The amount of the loan in this proposed rule is \$2,700,000.

The Contract

An appendix to the proposed § 600.1108 sets forth the Contract component of the Reduction Program for the Longline

Subsector. The appendix, or Contract, was previously codified as an appendix to the regulatory text of § 600.1105. This proposed rule will reference the appendix without reprinting it.

In addition to public comment about the proposed rule's substance, NMFS also seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule is consistent with the Appropriations and the Magnuson-Stevens Acts, and other applicable law, subject to further consideration after public comment.

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment for this proposed rule. The assessment discusses the impact of this proposed rule on the natural and human environment and integrates a Regulatory Impact Review (RIR) and an Initial Regulatory Flexibility Analysis (IRFA). NMFS will send the assessment, the review, and the analysis to anyone who requests a copy (see ADDRESSES).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the economic impacts that this proposed rule, if adopted, would have on small entities. NMFS intends the analysis to aid us in considering

regulatory alternatives that could minimize the economic impact on affected small entities. The proposed rule does not duplicate or conflict with other Federal regulations.

Summary of IRFA

The Small Business Administration (SBA) has defined small entities as all fish harvesting businesses that are independently owned and operated, are not dominant in their field of operation, and have annual receipts of \$4 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned or cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. Small entities within the scope of this proposed rule include individual U.S. vessel owners and fish dealers. There are no disproportionate impacts between large and small entities.

Description of the Number of Small Entities

The IRFA uses the most recent year of data available to conduct the analysis (2009-2010). The vessel owners that might be considered large entities were either affiliated with owners of multiple vessels or were catcher processors. In the Reduction Fishery, 17 of the 36 vessel owners meet the threshold for small entities based on gross revenue. However, these vessels are not considered small entities for purposes of the

RFA because of their affiliations with the larger fishing entities through the FLCC. All vessels in the Longline Subsector would benefit from a permit buyback because there will be less potential competition for the harvest. Because the proposed action would not result in changes to allocation percentages and participation is voluntary, net effects are expected to be minimal relative to the status quo.

Implementation of the buyback program will not change the overall reporting structure and recordkeeping requirements of the vessels in the BSAI Pacific cod fisheries. However, this program will impose collection of information requirements totaling 16 hours 10 minutes.

The proposed rule's impact would be positive for both the selected Offeror and for the post-reduction catcher processors whose landing fees repay the reduction loan because the Offeror and a majority of the remaining catcher processors will have voluntarily assumed the impact:

1. The Offeror voluntarily made an offer of \$2,700,000. Presumably, no Offeror would volunteer to make an offer with an amount that is inconsistent with the Offeror's interest; and

2. Reduction loan repayment landing fees would be instituted, and NMFS will complete the Reduction Program, only if a majority of all Subsector Members vote in favor of the

Reduction Plan in a referendum. Presumably, Subsector Members will not vote in favor of the Reduction Plan unless they conclude that the Reduction Program's prospective capacity reduction will be sufficient to enable them to increase their revenues enough to justify the fee.

Those participants who remain in the fishery after the buyback will incur additional fees of up to 5 percent of the ex-vessel production value of post-reduction landings. However, the additional costs would likely be mitigated by increased harvest opportunities for those remaining in the fishery.

NMFS believes that this proposed rule would not affect authorized BSAI Pacific cod ITAC or other non-pollock groundfish harvest levels nor harvesting practices.

NMFS rejected the no action alternative considered in the EA because NMFS would not be in compliance with the mandate of section 219 of the Appropriations Act to establish a buyback program. In addition, the Longline Catcher Processor Subsector of the non-pollock groundfish fishery would remain overcapitalized. Although too many vessels compete to catch the current subsector's total allowable catch (TAC) allocation, fishermen remain in the fishery because they have no other means to recover their significant capital investment. Overcapitalization reduces the potential net value that could be

derived from the non-pollock groundfish resource by dissipating rents, driving variable operating costs up, and imposing economic externalities. At the same time, excess capacity and effort diminish the effectiveness of current management measures (e.g. landing limits and seasons, bycatch reduction measures). Overcapitalization has diminished the economic viability of members of the fleet and increased the economic and social burden on fishery-dependent communities.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) previously approved this information collection under OMB Control Number 0648-0376 with requirements for 878 respondents with a total response time of 38,653 hours.

NMFS estimates that Sector Members would require an average of four hours to vote in a referendum. Persons affected by this proposed rule would also be subject to other collection-of-information requirements referred to in the proposed rule and also approved under OMB Control Number 0648-0376. These requirements and their associated response times are: completing and filing a fish ticket (10 minutes), submitting monthly fish

buyer reports (2 hours), submitting annual fish buyer reports (4 hours), and tendering fish buyer/fish seller reports when a person fails either to pay or to collect the loan repayment fee (2 hours).

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Interested persons may send comments regarding this burden estimate or any other aspect of this data collection requirement, including suggestions for reducing the burden, to both NMFS and OMB (see ADDRESSES).

This action would not result in any adverse effects on endangered species or marine mammals.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits,

Fishing vessels, Intergovernmental relations, Loan programs--
business, reporting and recordkeeping requirements.

Dated: July 24, 2012

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to
amend 50 CFR part 600 to read as follows:

PART 600--MAGNUSON-STEVENSON ACT PROVISIONS

Subpart M--Specific Fishery or Program Fishing Capacity
Reduction Regulations

1. The authority citation for 50 CFR part 600, subpart M,
is revised to read as follows:

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 et seq., 16 U.S.C.
1861a(b) through (e), 46 App. U.S.C. 53735, section 144(d) of
Division B of Pub. L. 106-554, section 2201 of Pub. L. 107-20,
and section 205 of Pub. L. 107-117, Pub. L. 107-206, Pub. L.
108-7, Pub. L. 108-199, and Pub. L. 108-447.

2. Section 600.1108 is added to subpart M to read as follows:

§ 600.1108 Longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery program.

(a) Purpose. This section implements the capacity reduction program that Title II, section 219(e) of Public Law 108-447 established for the longline catcher processor subsector of the Bering Sea and Aleutian Islands (BSAI) non-pollock groundfish fishery.

(b) Definitions. Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L and § 600.1105 of subpart M expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Reduction fishery means the Hook & Line, Catcher Processor (Longline Subsector); sometimes referred to as the "H&LCP Subsector) portion of the BSAI Pacific cod ITAC (in metric tons) set by the North Pacific Fishery Management Council (NPFMC) in December of each year multiplied by 2,205 (i.e., the rounded number of pounds in a metric ton) or the Longline Subsector of the BSAI non-pollock groundfish fishery that § 679.2 of this chapter defined as groundfish area/species endorsement.

(c) Capacity Reduction Program. As a result of the

completion of the Selection Process, written notification from the FLCC to NMFS identifying the selected offeror, and submission of the reduction plan, the capacity reduction program is implemented as follows:

(1) Loan repayment-- (i) Term. As authorized by section 219(B)(2) of the Appropriations Act, the capacity reduction loan (the Reduction Loan) shall be amortized over a thirty (30) year term. The Reduction Loan's original principal amount may not exceed the amount approved by the subsector. The subsector has currently approved a loan of two million seven hundred thousand dollars (\$2,700,000). Subsector Members acknowledge that in the event payments made under the Reduction Plan are insufficient to repay the actual loan, the term of repayment shall be extended by NMFS until the loan is paid in full. Repayment calculations and records will be kept separately for each program.

(ii) Interest. The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus 2 percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be

2 percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed, and will not vary over the remainder of the reduction loan's 30-year term. The Reduction loan will be subject to a level debt amortization. There is no prepayment penalty.

(iii) Fees. The Reduction Loan shall be repaid by fees collected from the Longline Subsector. The fee amount will be based upon: The principal and interest due over the next twelve months divided by the product of the Longline Subsector. In the event that the Longline Subsector portion for the ensuing year is not available, the Longline Subsector portion forecast from the preceding year will be used to calculate the fee.

(A) The fee will be expressed in cents per pound rounded up to the next one-tenth of a cent. For example: If the principal and interest due equal \$2,900,000 and the Longline Subsector portion equals 100,000 metric tons, then the fee per round weight pound of Pacific cod will equal 1.4 cents per pound. $[2,900,000 / (100,000 \times 2,205) = .01315]$. The fee will be assessed and collected on Pacific cod to the extent possible and if not, will be assessed and collected as provided for in paragraph (c)(3)(iii)(B) of this section.

(B) Fees must be assessed and collected on Pacific cod

used for bait or discarded. Although the fee could be up to 5 percent of the ex-vessel production value of all post-reduction Longline Subsector landings, the fee will be less than 5 percent if NMFS projects that a lesser rate can amortize the fishery's reduction loan over the reduction loan's 30-year term. In the event that the total principal and interest due exceeds 5 percent of the ex-vessel Pacific cod revenues, a standardized additional fee will be assessed. The additional fee shall be one cent per pound round weight, which is calculated based on the latest available revenue records and NMFS conversion factors for pollock, arrowtooth flounder, Greenland turbot, skate, yellowfin sole and rock sole.

(C) To verify that the fees collected do not exceed 5 percent of the fishery revenues, the annual total of principal and interest due will be compared to the latest available annual Longline Subsector revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or for any other reason NMFS believes the calculation must be postponed, the fee will remain at the previous year's amount until such a time that new calculations are made and communicated to the post-reduction fishery participants.

(D) It is possible that the fishery may not open during some years and no Longline Subsector portion of the ITAC is

granted. Consequently, the fishery will not produce fee revenue with which to service the reduction loan during those years. However, interest will continue to accrue on the principal balance. When this happens, if the fee rate is not already at the maximum 5 percent, NMFS will increase the fishery's fee rate to the maximum 5 percent of the revenues for Pacific cod and the species mentioned in paragraph (d)(2)(iii)(B) of this section, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until all principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

(iv) Reduction loan. NMFS has promulgated framework regulations generally applicable to all fishing capacity reduction programs in subpart L of this part. The reduction loan shall be subject to the provisions of § 600.1012, except that: the subsector members' obligation to repay the reduction loan shall be discharged by the owner of the Longline Subsector license regardless of which vessel catches fish under this license and regardless of who processes the fish in the reduction fishery in accordance with § 600.1013. Longline Subsector license owners in the reduction fishery shall be obligated to collect the fee in accordance with § 600.1013.

(v) Collection. The LLP License holders of vessels harvesting in the post-capacity reduction plan Longline Subsector shall be responsible for self-collecting the repayment fees owed by the LLP License holder. Fees shall be submitted to NMFS monthly and shall be due no later than fifteen (15) calendar days following the end of each calendar month.

(vi) Recordkeeping and reporting. The holder of the LLP Licenses on which vessels harvesting in the post-capacity reduction plan Longline Subsector is designated shall be responsible for compliance with the applicable recordkeeping and reporting requirements.

(2) Agreement with Secretary. The Selected Offeror shall complete and deliver to the FLCC for inclusion in the Reduction Plan submitted to NMFS, designee for the Secretary, a completed and fully executed Reduction Contract. The LLP License set forth on the Selected Offer shall be included as Reduction Fishing Interests in such Reduction Contract.

(d) Decisions of the Auditor and the FLCC. Time was of the essence in developing and implementing a Reduction Plan and, accordingly, the Offeror is limited to, and bound by, the decisions of the Auditor and the FLCC.

(1) The Auditor's examination of submitted applications, Offers, Prequalification Offers and Rankings was solely

ministerial in nature. That is, the Auditor verified whether the documents submitted by Subsector Members were, on their face, consistent with each other and the Database, in compliance with the requirements set forth in the Reduction Agreement, and signed by an Authorized Party. The Auditor presumed the validity of all signatures on documents submitted. The Auditor made no substantive decisions as to compliance (e.g., whether an interim LLP License satisfies the requirements of the Act, or whether a discrepancy in the name appearing on LLP Licenses and other documents was material).

(2) [Reserved]

(e) Specific Performance. The parties to the Reduction Agreement have agreed that the opportunity to develop and submit a capacity reduction program for the Longline Subsector under the terms of the Appropriations Act is both unique and finite and that failure of the Selected Offeror to perform the obligations provided by the Reduction Agreement will result in irreparable damage to the FLCC and the Subsector Members. Accordingly, the parties to the Reduction Agreement expressly acknowledge that money damages are an inadequate means of redress and agree that upon the failure of the Selected Offeror to fulfill their obligations under the Reduction Agreement that specific performance of those obligations may be obtained by suit in equity brought by the FLCC in any court of competent jurisdiction without obligation to arbitrate such action.

(f) Miscellaneous-- (1) Termination. The Reduction Agreement may be terminated at any time prior to approval of the Reduction Plan by NMFS, on behalf of the Secretary, by written notice from 50 percent of Subsector Members.

(2) Choice of law/venue. The Reduction Agreement shall be construed and enforced in accordance with the laws of the State of Washington without regard to its choice of law provisions. The parties submit to the exclusive personal jurisdiction of the United States District Court located in Seattle, Washington,

with respect to any litigation arising out of or relating to the Reduction Agreement or out of the performance of services hereunder.

(3) Incorporation. All executed counterparts of the Reduction Agreement, Application Forms and Offers constitute the agreement between the parties with respect to the subject matter of the Reduction Agreement and are incorporated into the Reduction Agreement as if fully written.

(4) Counterparts. The Reduction Agreement may be executed in multiple counterparts and will be effective as to signatories on the Effective Date. The Reduction Agreement may be executed in duplicate originals, each of which shall be deemed to be an original instrument. All such counterparts and duplicate originals together shall constitute the same agreement, whether or not all parties execute each counterpart.

(i) The facsimile signature of any party to the Reduction Agreement shall constitute the duly authorized, irrevocable execution and delivery of the Reduction Agreement as fully as if the Reduction Agreement contained the original ink signatures of the party or parties supplying a facsimile signature.

(ii) [Reserved]

(g) Amendment. All Subsector Members acknowledge that the Reduction Agreement, the Reduction Contract, and the Reduction

Plan may be subject to amendment to conform to the requirements for approval of the Reduction Plan by NMFS on behalf of the Secretary. The Auditor shall distribute to each Subsector Member in electronic format the amended form of the Reduction Agreement, the Reduction Contract, and the Reduction Plan, which amended documents in the form distributed by the Auditor and identified by the Auditor by date and version, the version of each such document then in effect at the time of any dispute arising or action taken shall be deemed binding upon the parties with respect to such dispute and/or action.

(h) Warranties. The Offeror must expressly warrant and represent in the Reduction Agreement that:

(1) The Offeror has had an opportunity to consult with an attorney or other advisors with respect to the Reduction Agreement, the Reduction Contract, and the Act and the ramifications of the ratification of the Reduction Plan contemplated therein;

(2) The Offeror has full understanding and appreciation of the ramifications of executing and delivering the Reduction Agreement and, free from coercion of any kind by the FLCC or any of its members, officers, agents and/or employees, executes and delivers the Reduction Agreement as the free and voluntary act of the Offeror;

(3) The execution and delivery of the Reduction Agreement, does not and will not conflict with any provisions of the governing documents of the Offeror;

(4) The person executing the Reduction Agreement has been duly authorized by the Offeror to execute and deliver the Reduction Agreement and to undertake and perform the actions contemplated herein; and

(5) The Offeror has taken all actions necessary for the Reduction Agreement to constitute a valid and binding obligation, enforceable in accordance with its terms.

(i) Approval of the Reduction Plan. Acceptance of the Offer is at the sole discretion of NMFS on behalf of the Secretary of Commerce. To be approved by NMFS, on behalf of the Secretary, any Reduction Plan developed and submitted in accordance with this section and Subpart M to this part must be found by the Assistant Administrator of NMFS, to:

(1) Be consistent with the requirements of section 219(e) of the FY 2005 Appropriations Act (Public Law 108-447);

(2) Be consistent with the requirements of section 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a)) except for the requirement that a Council or Governor of a State request such a program (as set out in section 312(b)(1)) and for the requirements of section

312(b)(4);

(3) Contain provisions for a fee system that provides for full and timely repayment of the capacity reduction loan by the Longline Subsector and that it provide for the assessment of such fees;

(4) Not require a bidding or auction process;

(5) Result in the maximum sustained reduction in fishing capacity at the least cost and in the minimum amount of time; and

(6) Permit vessels in the Longline Subsector to be upgraded to achieve efficiencies in fishing operations provided that such upgrades do not result in the vessel exceeding the applicable length, tonnage, or horsepower limitations set out in Federal law or regulation.

(j) Referendum. The following provisions apply to the Reduction Plan of this section to the extent that they do not conflict with subpart L including §§ 600.1009, 600.1010, 600.1013, and 600.1014 or 16 U.S.C. 1861a; except where the referendum is successful if a majority of all permit holders within the fishery vote in favor of the Reduction Program is accordance with 18 U.S.C. 1861a(d)(1)(B).

(k) Fee payment and collection system. Upon successful completion of the Referendum discussed above as authorized by

Public Law 108-447 and in accordance with 16 U.S.C. 1861a and § 600.1012 this fee collection system establishes:

(1) The subsector members' obligation to repay the reduction loan, and

(2) The loan's principal amount, interest rate, and repayment term; and

(3) In accordance with §§ 600.1013 through 600.1016, implements an industry fee system for the reduction fishery.

(1) Reduction loan amount. The reduction loan's original principal amount is \$2,700,000.

(m) Interest accrual from inception. Interest begins accruing on the reduction loan from the date which NMFS disburses such loan.

(n) Interest rate. The reduction loan's interest rate shall be the applicable rate which the U.S. Treasury determines at the end of fiscal year in which loan is disbursed plus 2 percent.

(o) Repayment terms. For the purpose of determining fee rates, the reduction loan's repayment term is 30 years from the date NMFS disburses the loan. However, fee collections shall continue indefinitely until the loan is fully repaid.

(p) Reduction loan repayment. The subsector members shall repay the reduction loan in accordance with § 600.1012. Both

fish buyers and fish sellers are considered subsector members for purposes of fee collection, deposit, disbursement, and accounting in accordance with § 600.1013.

(1) Subsector members in the reduction fishery shall collect and pay the fee amount in accordance with § 600.1105;

(2) Subsector members in the reduction fishery shall deposit and disburse, as well as keep records for and submit reports about, the applicable fees in accordance with § 600.1014, except the requirements under paragraphs (c) and (e) of this section. All collected fee revenue a fish buyer collects to repay the loan identified in paragraph (c) of this section shall be made to NMFS no later than fifteen (15) calendar days following the end of each calendar month. The annual reports identified in paragraph (e) of this section shall be submitted to NMFS by February 1 of each calendar year.

(3) The reduction loan is, in all other respects, subject to the provisions of §§ 600.1012 through 600.1017.

(q) Enforcement for failure to pay fees. The provisions and requirements of § 600.1016 (Enforcement) shall also apply to fish sellers and fish buyers subject to this fishery.

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